

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MARGARET BURNETT, a/k/a MARGUERITA  
BURNETT,

Defendant-Appellant.

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UNPUBLISHED  
October 19, 1999

No. 210418  
Allegan Circuit Court  
LC No. 97-010558 FH

Before: Hood, P.J., and Holbrook, Jr., and Fitzgerald, JJ.

PER CURIAM.

Defendant was convicted, following a jury trial, of one count of embezzlement over \$100, MCL 750.174; MSA 28.371. She was sentenced to five years probation, with the first year to be served in the county jail. Defendant appeals as of right, and we affirm.

Defendant first argues that there was insufficient evidence to support her conviction. We disagree. “In reviewing the sufficiency of the evidence presented at trial in a criminal case, we view the evidence in a light most favorable to the prosecution and determine whether a rational factfinder could conclude that the essential elements of the crime were proved beyond a reasonable doubt.” *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997).

Embezzlement occurs when an individual fraudulently disposes of or converts, to his own use, money or personal property of a principal. *People v Artman*, 218 Mich App 236, 241; 553 NW2d 673 (1996). Embezzlement also occurs when an individual conceals, with intent to convert to his own use, money or personal property without the consent of the principal. *Id.* Defendant contends that the prosecution failed to prove that she converted money because there was no evidence that money was missing, rather, the only evidence presented revealed discrepancies in bookkeeping records. However, Mark Lavanchure, a representative of defendant’s employer, testified that the total amount of cash found in the registers was counted daily then locked in a safe. Defendant prepared the daily reports, but did not deposit or record the amount of cash that had been counted by the sales staff. Instead, defendant lowered the amount of cash found in the register by \$50, \$100, \$200 or \$300 and adjusted the total sales or credit purchases in order to hide the missing cash. Defendant’s actions were

discovered when the credit purchases account was in excess of \$10,000 at the close of the fiscal year when it should have contained a zero balance. Defendant's contention, that there was insufficient evidence of her concealment, is without merit. *Terry, supra*.

Defendant next argues that the trial court erred in failing to instruct the jury regarding the lesser included offense of attempt. We disagree. A trial court is required to give requested instructions only if the evidence or facts of the case support the requested instruction. *People v Ho*, 231 Mich App 178, 189; 585 NW2d 357 (1998). Whether a jury instruction is applicable to the facts of the case lies within the sound discretion of the trial court. *Id.* Although attempt is a cognate lesser included offense of the completed offense, *People v Johnson*, 195 Mich App 571, 574; 491 NW2d 622 (1992), a request for an attempt instruction must only be granted where there is evidence tending to establish an attempt or where the defense presented or argued attempt. *People v Adams*, 416 Mich 53, 54-55; 330 NW2d 634 (1982). In the present case, the evidence did not support attempted embezzlement, but rather, demonstrated the completed act of embezzlement by someone. See *People v Shelton*, 138 Mich App 510, 516; 360 NW2d 234 (1984). Furthermore, defendant denied any embezzlement and argued that the bookkeeping procedures of defendant's employer caused the appearance of missing monies. Accordingly, the trial court did not err in failing to instruct on the cognate lesser included offense of attempted embezzlement. *Adams, supra*.

Lastly, defendant argues that the trial court abused its discretion in sentencing her to one year in jail. We decline to review this issue because defendant has already served her minimum sentence. *People v Rutherford*, 208 Mich App 198, 204; 526 NW2d 620 (1994). When a subsequent event renders it impossible for this Court to fashion a remedy, an issue becomes moot. *Id.*<sup>1</sup>

Affirmed.

/s/ Harold Hood  
/s/ Donald E. Holbrook, Jr.  
/s/ E. Thomas Fitzgerald

<sup>1</sup> We do note that we find nothing disproportionate in the sentence. *People v Milbourn*, 435 Mich 630, 635-636; 461 NW2d 1 (1990).